

Opinion No. 46-4834

January 15, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mrs. Georgia L. Lusk Superintendent of Public Instruction Department of Education
Santa Fe, New Mexico

{*171} We are in receipt of your letter of January 5, 1946, and the enclosed letter from Tito Valdez, Superintendent of Rio Arriba County Schools. In his letter he states that several teachers who held regular teaching certificates during the time they served probationary periods under the tenure act, have failed this year to meet the state board requirements, and so were issued war emergency certificates.

In view of this situation, you ask our opinion as to whether the temporary failure to meet certification requirements on the part of such teachers deprives them of the benefit of the tenure act.

Chapter 125 of the Laws of 1945, the tenure act now in force, provides in part as follows:

"Provided further that teachers holding war emergency certificates and those whose professional qualifications are otherwise below those required by the governing board, or teachers employed to fill positions of teachers who have entered the military service, shall not be entitled to the benefits specified in this act."

In view of this section, it is my opinion that even though a teacher had previously been entitled to the benefits of the teacher tenure act, such teacher would not be entitled to the benefits of the act in any year in which he held only a war certificate.

Of course on the closing day of the school in the spring of 1945, the teacher had his rights fixed for the ensuing school year. This does not mean, however that he would have any rights at the end of the term in the spring of 1946 since at that time he would not be within the protection of the tenure act.

I am enclosing an extra copy of this opinion for your convenience.

By ROBERT W. WARD,

Asst. Atty. General